IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1567 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/08/2004 in WP NO : 12613 OF 2004 on the file of the High Court.)

Between:

S. Ram Reddy, S/o. S. Buchi Reddy,
R/o. Plot No. 29/1, Kattedan Industrial Estate, Hyderabad - 500 077.

..... APPELLANT

AND

1 The Deputy Registrar, Co-operative Societies,
Andhra Pradesh, Hyderabad.
2 The Sales Officer - 14, Vasavi Cooperative Urban Bank Limited,
Malakpet, Hyderabad - 500 035.

.....RESPONDENTS.

Counsel for the Appellant: Mr.M.GOVIND REDDY

Counsel for Respondent No.1: G.P. FOR COOPERATION

Counsel for Respondent No.1: Mr.S.ASHOK ANAND KUMAR

The Court at the admission stage made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

Challenge is to the order passed by the learned single Judge dismissing the writ petition filed by the appellant. As a matter of fact, writ petitioner-appellant was one of the participants in the public auction conducted by the respondent bank to recover its dues offering immovable property to be sold. As per the auction notice, intending bidders have to deposit earnest money of Rs.50,000/-. Auction Notice also notifies that successful bidders have to deposit 15% of the bid amount immediately after the auction. Auction Notice notified that for more details intending bidders have to contact Sale Officer.

The petitioner did deposit a sum of Rs.50,000/- towards earnest money and was declared to be the highest bidder and deposited 15% of the bid amount. The petitioner was informed that he has to deposit the balance amount of Rs.25,65,000/- within fifteen days. The balance amount was not deposited and the petitioner sent representation and while the representation was pending, filed writ petition apprehending that the respondents might forfeit earnest money as well as 15% of the amount deposited. Accordingly, direction was sought to declare the threatened action of the respondents to forfeit 15% of the amount as illegal, and consequently direct the respondents to receive the balance amount within a period of eight weeks.

Be it stated that till date, no orders have been passed by the respondents either forfeiting the earnest money or calling upon the petitioner to pay any penalty or otherwise. Even, it is not the case of the respondents that property has not been auctioned. Learned single Judge, having regard to the condition in the pamphlet issued by the respondent Bank, held that as per the terms and conditions specified in the tender schedule separately it should be open to the respondents to forfeit earnest money as well as 15% of the bid amount. Learned single Judge dismissed the writ petition on the ground that without challenging the validity of the auction conditions as notified in the public auction notice, challenge to the threatened action of the respondents is not maintainable.

We have heard the learned counsel for the parties.

As a matter of fact, writ petition itself was premature so far as threatened action of the respondents is concerned. As regards forfeiture of any part of the deposited amount or of 15% bid amount, sale has to be conducted for the recovery of the amount under the provisions of the A.P. Co-operative Societies Act and the

A.P. Co-operative Societies Rules, 1964, and has to be conducted as per the procedure laid down in Rule 52. Nowhere the Rule authorizes the Sale Officer to call upon the prospective bidders to make a deposit of earnest money irrespective of the fact that as per the auction notice, the Sale Officer notified that prospective bidders have to deposit earnest money of Rs.50,000/-. This earnest money of Rs.50,000/- has to be termed as deposit and will be separate from the bid amount of 15% or balance of 85% of the bid amount. As per clause (g) of sub-rule (11) of Rule 52 of the Rules, successful bidder is required to deposit a sum of money equivalent to 15% of the price of the immovable property on the spot. In default of making 15% payment, Sale Officer is entitled to re-sell the property forthwith. As per clause (h), the remainder of the bid amount and the amount required towards stamp fee for the certificate under clause (v) of sub-rule (14) shall be paid within fifteen days from the date of sale. There is no power vested in the Sale Officer to extend the period of fifteen days. The power is vested with the Registrar of the District to extend the time for payment of stamp duty up to thirty days from the date of sale. There is no power vested in the Registrar to extend the time for payment of balance bid amount. Sub-clause (i) of sub-rule (11) of Rule 52 further states that in default of payment of the balance 85% of the amount within the period mentioned in clause (h), the deposit may, if the Registrar thinks fit after defraying the expenses of the sale, be forfeited to the Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. Obviously, the deposit mentioned herein is not 15% of the bid amount or any other deposit. If the property is not resold and there is shortfall in the bid amount, discretion has to be exercised by the Sale Officer judicially as regards the amount of deposit to be forfeited. The Sale Officer exercising the powers of Registrar for conduct of sale shall take appropriate action on sound judicial principles as to what part of the deposit is allowed to be forfeited after the property is decided to be resold. At that stage of the action, if the petitioner is aggrieved by the said order, the petitioner is at liberty to challenge the said order in accordance with law. As there is no power vested in the Registrar to extend the time for deposit of the balance amount, the second prayer cannot be allowed. In view of the above, we set aside the order of the learned Single Judge and dispose of the Writ Appeal with the directions aforementioned.

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(DEVINDER GUPTA, C.J.)

18th November 2004.

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(C.V.RAMULU, J.)

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To

1.The Deputy Registrar, Co-operative Societies,
Andhra Pradesh, Hyderabad.
2.The Sales Officer - 14, Vasavi Cooperative Urban Bank Limited,
Malakpet, Hyderabad - 500 035.

3. Two CCs to Government Pleader for Cooperation, High Court Buildings,
Hyderabad (OUT).

4. Two CD copies.